ALLIANCE BANK BHD

v.

SUHAILI ABDUL RAHMAN

HIGH COURT SABAH & SARAWAK, LABUAN
RAVINTHRAN PARAMAGURU J
[CIVIL CASE NO: LBN-29-18-11-2012]
18 NOVEMBER 2013

BANKRUPTCY: *Notice - Setting aside - Whether judgment obtained in Kuala Lumpur could be enforced in Labuan - Whether valid judgment - Bankruptcy Rules 1969, r. 101*

CIVIL PROCEDURE: *Court - Jurisdiction - Judgment of High Court - Whether judgment obtained in Kuala Lumpur could be enforced in Labuan - Whether leave of court required - Judgment debtor resided in Labuan - Whether should be sued in Labuan - Whether valid judgment - Courts of Judicature Act 1964, ss. 7(2) & 23(1) - Federal Constitution, art. 121(3)*

The judgment creditor ('JC') entered judgment in the Kuala Lumpur High Court in the sum of RM41,346,975 against the judgment debtor ('JD'). Upon failure of the JD to satisfy the judgment debt, the JC served a bankruptcy notice ('BN') on the JD in Labuan which was the place of residence of the JD. Subsequently, bankruptcy proceedings were commenced in the High Court of Sabah and Sarawak at Labuan. However, the JD applied to set aside the BN on the sole ground that the judgment obtained in Kuala Lumpur could not be enforced in Labuan. The JD argued that since there are two High Courts in Malaysia, the judgment obtained in one could not be enforced in another without leave. This argument found favour with the Deputy Registrar who set aside the BN. Hence, this appeal. At the outset, the JD raised a preliminary objection citing s. 23(1) of the Courts of Judicature Act 1964 ('CJA 1964'), that the judgment itself was flawed as the JD lived in Labuan and therefore, he should have been sued in Labuan instead of Kuala Lumpur.

Held (allowing appeal with costs):

(1) The preliminary objection constituted a collateral attack on the underlying judgment upon which the bankruptcy notice was based. It is trite law that a collateral attack could only be mounted on a judgment if it could be demonstrated that the said judgment is a nullity. The residence of the plaintiff is only one of the factors that could found jurisdiction under s. 23(1) of the CJA 1964. In the

A instant case, the relevant loan agreements were executed at the Kuala Lumpur branch of the JC. The judgment had not been set aside and was therefore a valid judgment. As such, the preliminary objection was dismissed. (para 3)

B **(2)** Rule 101 of the Bankruptcy Rules 1969 required the petition to be filed at the place where the JD resided for the greater part of one year preceding the petition. Since there was no dispute that the JD was a Labuan resident, it was correct for the JC to cause the BN to be issued out of the High Court of Sabah and Sarawak at Labuan. (para 4)

C **(3)** Section 23(1) of the CJA 1964 did not exclude the operation of an order made by one High Court in the local jurisdiction of another High Court. Further, s. 7(2) of the CJA 1964 provides that an order made under the authority of the court could be executed anywhere in Malaysia. Also pursuant to art. 121(3) of the Federal Constitution, the judgment though issued under the authority of the High Court in Malaya had full force in any part of the Federation. Therefore, the argument that leave was required from the High Court of Malaya for bankruptcy proceedings to be commenced in Labuan was without merit. (paras 5-7)

E **Case(s) referred to:**
Fung Beng Tiat v. Marid Construction Co [1997] 2 CLJ 1 FC ***(dist)***
Pantai Bayu Emas Sdn Bhd & Ors v. Southern Bank [2009] 2 CLJ 630 FC ***(refd)***

Legislation referred to:
F Bankruptcy Rules 1969, r. 101
Courts of Judicature Act 1964, ss. 7(2), 23(1)
Federal Constitution, art. 121(3)

For the judgment creditor - Farah Najiha; M/s Shaikh David Raj
For the judgment debtor - Idrus Ibrahim; M/s J Ambrose & Partners

G *Reported by Sandra Gabriel*

JUDGMENT

H **Ravinthran Paramaguru J:**

[1] This is an appeal by the judgment creditor against the decision of the Sessions Court Judge sitting as Deputy Registrar who set aside a bankruptcy notice.

I **[2]** The brief background facts are as follows. The judgment creditor had entered judgment in the High Court in Malaya at Kuala Lumpur in the sum of RM41,346,975 against the judgment debtor on 30 April

2011. Upon failure of the judgment debtor to satisfy the judgment debt, the judgment creditor served a bankruptcy notice on the judgment debtor. The bankruptcy proceedings were commenced in the High Court of Sabah and Sarawak at Labuan. The bankruptcy notice was served in Labuan which is the place of residence of the judgment debtor. However, the judgment debtor applied to set aside the bankruptcy notice on the sole ground that the judgment which was obtained in Kuala Lumpur cannot be enforced in Labuan. The basis of this argument is as follows. There are two High Courts in Malaysia and according to counsel for the judgment debtor, the judgment obtained in one cannot be enforced in another without leave. This argument found favour with the Deputy Registrar who set aside the bankruptcy notice and hence this appeal.

Preliminary Objection

[3] At the outset of this appeal, counsel for the judgment debtor raised a preliminary objection. He submitted that the judgment itself is flawed as the judgment debtor lives in Labuan and therefore should have been sued in Labuan instead of Kuala Lumpur. He cited s. 23(1) of the Courts of Judicature Act 1964 in support. In my opinion, this argument is meritless. The preliminary objection constitutes a collateral attack on the underlying judgment upon which the bankruptcy notice is based. It is trite law that a collateral attack can only be mounted on a judgment if it can be demonstrated that the said judgment is a nullity. In the instant case, the counsel for the judgment debtor has not demonstrated why the judgment of the Kuala Lumpur is a nullity. The residence of the plaintiff is only one of the factors that can found jurisdiction under s. 23(1) of the Courts of Judicature Act 1964. In the instant case, the relevant loan agreements were executed at the Kuala Lumpur branch of the judgment creditor. The judgment has not been set aside and is therefore a valid judgment. I shall therefore dismiss the preliminary objection.

[4] In respect of the appeal, counsel for the judgment debtor argued that the judgment which is obtained in Kuala Lumpur cannot be enforced in Labuan. However, the authority that he cited, *Fung Beng Tiat v. Marid Construction Co* [1997] 2 CLJ 1; [1996] 2 MLJ 413, is not exactly on point. In that case, the judgment was obtained in Kuala Lumpur and the bankruptcy proceedings were also commenced in Kuala Lumpur although the judgment debtor resided in Sabah. At the High Court, counsel for the judgment debtor objected to the bankruptcy proceedings that instituted in Kuala Lumpur but the High Court Judge opined that the proceedings could be transferred to Kota Kinabalu. At the Court of Appeal, Gopal Sri Ram JCA held that one High Court cannot transfer proceedings to another High Court as they are separate courts. There

was no dispute in that case that the judgment debtor resided in Sabah. In the premises, the Court of Appeal struck out the proceedings with liberty to re-file in Kota Kinabalu. I do not see how this case can assist the judgment debtor in the instant appeal. In the instant case, the judgment creditor has acknowledged that the judgment debtor resides in Labuan and that is the very reason the bankruptcy proceedings have been commenced in the High Court of Sabah and Sarawak at Labuan. Rule 101 of the Bankruptcy Rules 1969, as correctly pointed out by counsel for judgment creditor, requires the petition to be filed at the place where the judgment debtor has resided for the greater part of one year preceding the petition. Rule 101 reads as follows:

> 101. Place for filing petition
>
> (1) The petition shall be filed in the Court in which it is to be presented.
>
> (2) Where the debtor has for the greater part of one year immediately preceding the presentation of the petition carried on business in one State and resided in another State the petition may be filed in the Court of the State in which he has carried on business.

[5] In the instant case, there is no dispute that the judgment debtor is a Labuan resident. Therefore, it is correct for the judgment creditor to cause the bankruptcy notice to be issued out of the High Court of Sabah and Sarawak at Labuan. Counsel for the judgment debtor argued that the judgment of the High Court of Malaya cannot be enforced in the High Court of Sabah and Sarawak. This proposition is without any merit and counsel for the judgment debtor did not cite any relevant authority to support it either. However, there is an eminent authority that supports the proposition to the contrary. In the case of *Pantai Bayu Emas Sdn Bhd & Ors v. Southern Bank* [2009] 2 CLJ 630, the central issue was whether a vesting order made by the High Court in Malaya has legal effect in Sabah and Sarawak. The Federal Court ruled that s. 23(1) of the Courts of Judicature Act 1964 does not in any way exclude the operation of an order, made by one High Court, in the "local jurisdiction" of another High Court. The Federal Court cited s. 7(2) of the Courts of Judicature Act 1964 that provides an order made under the authority of the court can be executed anywhere in Malaysia. Section 7(2) reads as follows:

> (2) All writs, summonses, warrants, orders, rules, notices and other processes whatsoever, whether civil or criminal, issued or matter by or by the authority of the Court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia.

[6] The Federal Court also cited art. 121(3) of the Federal Constitution to support its argument. Article 121(3) reads as follows:

> (3) Subject to any limitations imposed by or under federal law, any order, decree, judgment or process of the courts referred to in Clause (1) or of any judge thereof shall (so far as its nature permits) have full force and effect according to its tenor throughout the Federation, and may be executed or enforced in any part of the Federation, accordingly; and federal law may provide for courts in one part of the Federation or their officers to act in aid of courts in another part.

[7] In my view, the above authority is applicable by way of analogy to the instant case. The judgment in question, though issued under the authority of the High Court in Malaya has full force in any part of the Federation. Therefore, the argument that leave is required from the High Court of Malaya for bankruptcy proceedings to be commenced in Labuan is without merit.

[8] In conclusion, I shall allow the appeal and order the Deputy Registrar to fix a date for the hearing of the creditor petition. I shall order costs of RM2,000 in favour of the judgment creditor here and below.